



NEWS

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF MARCH 11, 2002

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#02-39 People v. Buttram, S103761. (G028162; 94 Cal.App.4th 1249.) Petition for review after the Court of Appeal dismissed an appeal from a judgment of conviction of criminal offenses. This case presents the following issue: When a defendant pleads guilty or no contest pursuant to an agreement that includes a maximum potential sentence and the trial court at a subsequent sentencing hearing imposes the maximum sentence, must the defendant obtain a certificate of probable cause in order to raise on appeal the claim that the trial court abused its discretion in imposing that sentence? (See Pen. Code, § 1237.5; Cal. Rules of Court, rules 31, 45.)

#02-40 People v. Hanks, S102982. (F035120; unpublished opinion.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense.

#02-41 People v. Hester, S102961. (F034897; unpublished opinion.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense.

Hester and *Hanks* both include the following issue: When the police without adequate justification stop a car containing several persons, some of whom are on probation or parole and are subject to a search condition and some of whom are not, and the police are unaware of the search conditions, is evidence obtained during the stop

(over)

admissible against all of the occupants, none of the occupants, or only those occupants who are subject to a search condition? (Cf. *In re Tyrell J.* (1994) 8 Cal.4th 68; *People v. Robles* (2000) 23 Cal.4th 789.)

#02-42 People v. Kramer, S103746. (G027217; unpublished opinion.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does Penal Code section 654, which provides that “[a]n act or omission that is punishable in different ways by different provisions of law shall be punished *under the provision that provides for the longest potential term of imprisonment*” (emphasis added), require the trial court to consider only the base term of each offense in determining which provides the longest potential term of imprisonment, or should the court in making this determination consider both the base term of an offense and any applicable enhancements attached to that offense?

#02-43 People v. Meloney, S103633. (A093589; 94 Cal.App.4th 442.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offense. This case presents the following issue: When a defendant has been convicted of committing an offense while released on bail arising from a separate charge and the trial court has stayed the imposition of sentence on an on-bail enhancement as provided in Penal Code section 12022.1, does the court that imposed and stayed the on-bail enhancement have jurisdiction to lift the stay after the defendant is subsequently convicted in another court on the separate charge, or does only the other court in which the defendant is subsequently convicted have authority to lift the stay?

#02-44 People v. Ranger Ins. Co., S103451. (B145348; 93 Cal.App.4th 1286.) Petition for review after the Court of Appeal affirmed an order denying a motion to vacate the forfeiture of a bail bond in a criminal case.

#02-45 People v. Seneca Ins. Co., S104487. (B148121; 94 Cal.App.4th 1358.) Petition for review after the Court of Appeal reversed an order denying a motion to vacate the forfeiture of a bail bond in a criminal case.

Ranger Insurance and *Seneca Insurance* both present the following issue: Are the requirements of Penal Code section 1166, specifying the findings a trial court must make

before releasing a convicted defendant on bail prior to sentencing, applicable where the defendant pleads guilty or no contest or only where the defendant is convicted on a verdict of guilty?

#02-46 Campise v. Morrison Health Care, Inc., S104279. (F034128; unpublished opinion.) Petition for review after the Court of Appeal reversed a summary judgment in a civil action.

#02-47 Campise v. Valley Children's Hospital, S104260. (F034603; unpublished opinion.) Petition for review after the Court of Appeal reversed a summary judgment in a civil action.

The court ordered briefing deferred in *Morrison Health Care* and *Valley Children's Hospital* pending decision in *State Department of Health Serv. v. Superior Court*, S103487 (#02-24), which presents the following issues: (1) Is an employer strictly liable under the Fair Employment & Housing Act (FEHA) (Gov. Code, § 12900 et seq.) for sexual harassment committed by a supervisor? (2) Is the *Burlington/Faragher* defense recognized in federal Title VII sexual harassment claims (*Burlington Industries v. Ellerth* (1998) 524 U.S. 742; *Faragher v. City of Boca Raton* (1998) 524 U.S. 775) available in sexual harassment actions brought under the FEHA?

#02-48 Gehrs v. Planned Parenthood Golden Gate, S103793. (A092215; unpublished opinion.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of dismissal of a civil action. The court ordered briefing deferred pending decision in *Balser v. Wells Fargo Bank, N.A.*, S101833 (#01-170), which presents the following issue: Is the privilege for reporting suspected criminal activity to a police officer (Civ. Code. § 47(b)) absolute or does it apply only to statements made in good faith?

#02-49 People v. Gruninger, S103703. (E026993, E030212; unpublished opinion.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense and denied a petition for writ of habeas corpus. The court ordered briefing deferred pending decision in *People v. Superior Court (Jimenez)*, S099542 (#01-126), which includes the following issue: When the prosecution refiles criminal charges following the grant of a motion to suppress evidence and the dismissal of the initial

charges, does Penal Code section 1538.5, subdivision (p), which provides that relitigation of the motion to suppress evidence “shall be heard by the same judge who granted the motion at the first hearing if the judge is available,” limit the right of the prosecution to exercise a peremptory challenge to a judge or magistrate under Code of Civil Procedure section 170.6?

#02-50 People v. Lopez, S103607. (B143476; unpublished opinion.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Garcia*, S097765 (#01-94), which presents the following issue: Can an enhancement be imposed on an aider and abettor under Penal Code section 12022.53, subdivision (e), for the use of a firearm in a felony that the jury finds was committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22, subdivision (b), if the person who allegedly personally used the firearm was not convicted of the underlying felony?

#02-51 Swiderski v. Milberg, Weiss, Bershad, Hynes & Lerach, S104088. (D036160; 94 Cal.App.4th 719.) Petition for review after the Court of Appeal reversed an order granting a new trial in a civil action. The court ordered briefing deferred pending decision in *Little v. Auto Stiegler, Inc.*, S101435 (01-165), which includes the following issue: Do the minimum procedural requirements for arbitration of claims of employment discrimination under the Fair Employment & Housing Act (Gov. Code, § 12900 et seq.) established in *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83 apply to the arbitration of a claim for wrongful termination in violation of public policy?

DISPOSITIONS

#01-135 Alpha Therapeutic Corp. v. Home Insurance Co., S099962, was dismissed and remanded to the Court of Appeal.

#01-133 People v. Zangari, S099489, was dismissed and remanded to the Court of Appeal. The opinion of the Court of Appeal, now printed at 89 Cal.App.4th 1436, was ordered published.

STATUS

#00-86 People v. Spence, S087865. In this case, in which briefing was previously deferred pending decision in *People v. Moss*, S087478 (#00-79), the court ordered briefing deferred pending decision in *People v. Willis*, S079245 (#99-125), which includes the following issue: Does the good faith exception set forth in *United States v. Leon* (1984) 468 U.S. 897 prevent exclusion of evidence obtained during a parole search based on erroneous information supplied to police that the defendant was on parole?

#02-12 People v. Stanistreet, S102722. The court ordered briefing expanded to include the following issues: (1) Does the criminal sanction of Penal Code section 148.6, subdivision (a)(1), apply to all knowingly false allegations of misconduct against a peace officer or only to those allegations made pursuant to the provisions of subdivision (a)(2) of that section? (2) What is the significance, if any, of the answer to the legal issue of this case?

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